

Industry-Specific Apportionment – Telecommunications

Revenue Laws Study Committee

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Apportionment

- Income of a multistate business is generally apportioned by use of a 3-factor formula
 - Property
 - Payroll
 - Sales (double weighted)
- Numerator consists of property, payroll and sales in NC
- Denominator consists of property, payroll and sales everywhere

Current Industry-Specific Formulas

- Railroads – railway operating revenue
- Telephone Companies – operating revenue from local service
- Motor Carriers – vehicle miles
- Public Utilities – sales factor only
- Air/Water Carriers – revenue ton miles

Special Formula for Telephone Companies

- G.S. 105-130.4(n) - All apportionable income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

Issue:

- Current apportionment methodology has been in place since 1957
- “Telephone Company” is not defined
- “Local service” and “Toll services” are terms not applicable to wireless and voice over internet protocol services
- Traditional landline companies use single factor
- Other telecommunications companies use three factor

Level the Playing Field

- All businesses that provide telecommunication services should be subject to the same apportionment methodology

Telecommunication Services Defined

- Electronic transmission, conveyance, or routing of voice, data, audio, video or any other information or signals to a point, or between or among points.

Telecommunication Services Include

- Includes 800/900 service
- Fixed or mobile wireless service
- Paging service
- Prepaid service
- Private communication service
- International/Interstate telecommunications service
- Network access service
- Pay telephone service

Telecommunication Services Does Not Include

- Data processing and information services where the purchaser's primary purpose for the underlying transaction is the processed data or information.
- Installation or maintenance of wiring or equipment
- Advertising
- Billing and collection services provided to third parties
- Internet access service
- Radio and television audio and video programming service
- Digital products delivered electronically

Recommendation

- Adopt Industry-Specific apportionment formula
- 3-factor formula
- Payroll Factor – unchanged
- Property Factor
 - Outer-jurisdictional property is excluded from the property factor

Recommendation

- Sales of tangible personal property – unchanged
- NC sales numerator includes gross receipts from:
 - **Telecommunication services** sold on a call-by-call basis when the call originates and terminates in NC, or the call originates or terminates and the service address is in NC
 - **Telecommunication services** sold on other than a call-by-call basis and the customer's place of primary use is in NC
 - **Mobile telecommunication services** when the customer's place of primary use is in NC pursuant to the Mobile Telecommunications Sourcing Act

Recommendation

- NC sales numerator includes gross receipts from:
 - **Prepaid and postpaid services** when the origination point is in NC
 - **Private communication services** when the customer channel termination points are located in NC
 - **A portion of the wholesale sales** based on FCC Table 15.6, Telecommunications Revenues by State
 - **Ancillary services** when the customer's primary use is in NC
- Gross receipts from services which are not taxable in the state to which they would be apportioned under these rules are excluded from the denominator of the sales factor



Questions?